

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Italo Wilian Tigua Merchan,
Petitioner

v.

Case No. 23-cv-69-SM
Opinion No. 2023 DNH 052

Warden, FCI Berlin,
Respondent

O R D E R

Italo Wilian Tigua Merchan is a federal prisoner currently being held at the Federal Correctional Institution in Berlin, New Hampshire. He petitions the court pursuant to 28 U.S.C. § 2241, saying the Bureau of Prisons ("BOP") has improperly classified him as "ineligible" to apply time credits he has earned under the First Step Act and, therefore, incorrectly calculated his projected release date. He seeks an order directing the BOP to properly account for those time credits and to amend his projected release date by one year.

When Tigua Merchan filed his petition, his claims had merit. But, shortly thereafter, the BOP properly credited him with earned FSA time credits and advanced his "projected release" date by one year (the maximum permitted). Accordingly,

Tigua Merchan has received all the relief he seeks and his petition is now moot.

Discussion

There are two ways by which inmates serving federally-imposed sentences may reduce the amount of time they must serve in prison. Those serving a term of imprisonment greater than one year may earn "good time" credits for "exemplary compliance with institutional disciplinary regulations." 18 U.S.C. § 3624(b)(1). Inmates may also earn "time credits" under the First Step Act for the successful completion of "evidence-based recidivism reduction programming or productive activities." 18 U.S.C. § 3632(d)(4)(A). This case involves the latter.

Tigua Merchan is currently serving a 120-month term of imprisonment, to be followed by a 10-year term of supervised release. He is the subject of an Immigration and Customs Enforcement ("ICE") detainer that was lodged against him in October of 2017. With the benefit of good time credits, his anticipated "Final Statutory Release Date" is April 21, 2026. See Sentence Monitoring Computation Data (document no. 6-3) at 1. None of that is in dispute.

In addition to good time credit, Tigua Merchan has also earned a substantial number of FSA time credits, 365 of which may be applied toward early transfer to supervised release. See FSA Time Credit Assessment as of March 25, 2023 (document no. 6-4) at 1. See also 18 U.S.C.A. § 3624(g)(3) (providing that the BOP may apply no more than 12 months of earned FSA time credits to advance an inmate's date of transfer to supervised release). So, factoring in both his good time credits and his FSA time credits, Tigua Merchan's "Projected Release Date" should be April 21, 2025 - that is, 365 days earlier than his "Final Statutory Release Date." But, says Tigua Merchan, the BOP is refusing to apply those FSA time credits and, therefore, his projected release is off by one year.

Tigua Merchan was, for a time, correct. But, on February 6, 2023, the BOP amended its procedures for implementing the First Step Act. Among other things, it removed language from the prior policy that prohibited prisoners subject to ICE detainees from applying FSA time credits toward an early release to prerelease custody or supervised release. See U.S. Dept. of Justice, Bureau of Prisons, Program Statement 5410.10 CN-1 at 2 (Feb. 6, 2023).¹ Consequently, inmates like Tigua Merchan who

¹ Available at: <https://www.bop.gov/PublicInfo/execute/policysearch?todo=query&series=5000>).

are subject to ICE detainers (but not final orders of removal) are now permitted to apply earned FSA time credits toward prerelease custody or supervised release. See generally 18 U.S.C. § 3632(d)(4)(E)(i).

Following that change in policy, the BOP recalculated Tigua Merchan's Sentence Monitoring Computation Data. The BOP's records now accurately show that he is eligible both to earn and to apply earned FSA time credits toward early release. See FSA Time Credit Assessment dated March 23, 2023, at 1.

Additionally, the BOP has applied the maximum number of FSA time credits (365) to calculate his "Projected Release Date" of April 21, 2025 (rather than April 21, 2026). See Sentence Monitoring Computation Data at 1.

Conclusion

For the foregoing reasons, it is plain that Tigua Merchan has received all the relief sought in his petition and there is no longer any case or controversy. His petition (**document no. 1**) is, therefore, dismissed as moot. The government's motion for summary judgment (**document no. 6**) is likewise denied as moot.

The Clerk of Court shall enter judgment in accordance with this order and close the case.

SO ORDERED.



Steven J. McAuliffe
United States District Judge

May 9, 2023

cc: Italo Wilian Tigua Merchan, pro se
Heather A. Cherniske, Esq.